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FISCAL IMPACT STATEMENT

LS 7113

BILL NUMBER: HB 1006

NOTE PREPARED: Jan 25, 2014

BILL AMENDED: Jan 23, 2014

SUBJECT: Reconciles Technical and Substantive Conflicts Between HEA 1006-2013 and Other Bills.

FIRST AUTHOR: Rep. Steuerwald

BILL STATUS: CR Adopted - 1st House

FIRST SPONSOR:

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

Nomenclature: The bill changes the nomenclature for felonies from "Class" to "Level" for statutes not amended by HEA 1006-2013 and for statutes added to the Indiana Code in the 2013 session.

Juvenile Court Jurisdiction: It removes criminal gang activity, criminal gang intimidation, and certain drug offenses from the list of crimes over which a juvenile court does not have jurisdiction.

Pretrial Diversion: The bill authorizes pretrial diversion for persons charged with a Level 5 or Level 6 felony.

Sentence Modification: The bill prohibits a credit-restricted felon from obtaining sentence modification. It provides that, not later than 365 days after: (1) a convicted person begins serving the person's sentence; and (2) the court obtains a report from the Department of Correction concerning the convicted person's conduct while imprisoned; the court may reduce or suspend the person's sentence and impose any sentence the court was authorized to impose at the time of sentencing.

The bill specifies that, if more than 365 days have elapsed since the convicted person began serving the sentence, the court may reduce or suspend the sentence and impose any sentence the court was authorized to impose at the time of sentencing.

The bill also limits the filing of subsequent petitions to modify a sentence, and removes the requirement that the court hold a hearing.

Advisory Sentence: It requires a court to explain its reasons for imposing a sentence unless the court imposes an advisory sentence, and it increases the advisory sentence:

- (1) from 6 years to 10 years for a Level 3 felony;
- (2) from 4 years to 6 years for a Level 4 felony; and
- (3) from 2 years to 3 years for a Level 5 felony.

Cocaine, Narcotic Drugs, and Methamphetamine: It makes changes to the penalties for the crimes of dealing in cocaine or a narcotic drug and dealing in methamphetamine.

Controlled Substance Offenses: It enhances the penalties for certain controlled substance offenses if a person commits an offense:

- (1) within 250 feet of school property, a public park, a family housing complex, or a child care facility; or
- (2) in the physical presence of a child less than 18 years of age, knowing that the child was present and might be able to see or hear the offense.

Nonsuspendible Sentence: The bill increases the number of crimes that are nonsuspendible. It allows a court to suspend any part of a sentence for a Level 2 felony or a Level 3 felony concerning a controlled substance.

Habitual Offenders: The bill requires a court to sentence a person found to be a habitual offender to an additional fixed term of imprisonment that is between:

- (1) 6 years and 20 years, for a person convicted of murder or a Level 1 through Level 4 felony; and
- (2) 2 years and 6 years, for a person convicted of a Level 5 or Level 6 felony.

Credit Time: Credit Class - The bill amends credit time provisions by creating a new Class A that provides that a person: (1) who is not a credit-restricted felon; and (2) who is imprisoned for a Level 6 felony or a misdemeanor or imprisoned awaiting trial or sentencing for a Level 6 felony or misdemeanor; earns one day of credit time for every day the person is imprisoned or confined awaiting sentencing.

The bill provides that the:

- (1) Class I through Class IV credit class system applies to a person who commits an offense before July 1, 2014; and
- (2) Class A through Class D credit class system effective July 1, 2014, applies to a person who commits an offense after June 30, 2014.

Educational Credit Time - The bill provides that educational credit time is deducted from the release date that would otherwise apply to the person.

Home Detention - The bill also provides that a person confined on home detention as a condition of probation earns one day of credit time for each day the person is confined on home detention.

(The introduced version of this bill was prepared by the Criminal Law and Sentencing Policy Study Committee.)

Effective Date: July 1, 2014.

Explanation of State Expenditures: (Revised) *Summary-* The bill contains provisions that will reconcile

existing versions of state law with little or minimal fiscal impact. The bill also contains numerous provisions that potentially increase or decrease sentence length. This table summarizes the general nature of the proposed change (specific numbers are used where available), and the details of each provision are provided below.

General Description	Estimated Fiscal Impact
Juvenile Court Jurisdiction	Potential difference in the type of facility for state incarceration.
Pretrial Diversion	Indeterminate reduction in the number of Level 5 and Level 6 offenders incarcerated in state facilities.
Sentence Modification	Indeterminate, potential reduction of offenders incarcerated in state facilities.
Advisory Sentence	Potential increase in utilization of prisons based on higher advisory sentences.
Cocaine, Narcotic Drugs, and Methamphetamine	Estimated cost increase of \$2,136,455 to \$8,354,850 in FY 2015 and FY 2016.
Nonsuspendible Sentence	Estimated to increase costs \$170,524 to \$666,855 for offenders admitted with sentences equal to the minimum sentence.
Habitual Offenders	Indeterminate potential increase in prison utilization.
Credit Time	<p>Potential decrease in prison utilization with decreased cost of \$8,282,682 to \$32,390,375 for Level 6 felons being assigned to Class A credit earnings.</p> <p>Estimated cost decrease of \$233,344 to \$254,185 in FY 2015 and FY 2016 from changes to educational credit time.</p>

Additional Information:

Pretrial Diversion: The bill allows for prosecutorial diversion of Level 5 and Level 6 felony offenders. The bill maintains exclusions for offenders who commit listed crimes. However, offenders convicted of certain criminal recklessness offenses would be removed from the list and would be eligible for pretrial diversion under the bill. The number of felony offenders diverted from a prison sentence by the inclusion of Level 5 and Level 6 offenders is indeterminate.

If 10% of those sentenced for a Level 5 or Level 6 felony were instead diverted, there would be a reduction of 66 full-year stays in a Department of Corrections (DOC) facility annually. This would be a savings of \$428,192 to \$1,674,494 in a two-year period. However, these reductions and savings are only illustrative, and actual results will be based on the circumstances of the crimes and the decisions of prosecutors to divert felony-level offenders.

Advisory Sentence: Under the bill, a court would not have to explain its reasons if the court imposes the advisory sentence. The bill also increases the advisory sentences for Level 3, Level 4, and Level 5 felonies.

The increased advisory sentence in the bill could tend to ‘scale up’ sentences, in general. The table shows the estimated increases in full-year-equivalent stays. The increase grows at about 9.5% a year, suggesting that more offenders might serve a longer term of incarceration with higher advisory sentences.

	2015	2016	2017	2018	2019	2020	2025	2030	2035
Full-Year-Equivalent Stays	722	1,586	2,396	3,004	3,438	3,756	4,506	4,758	4,874

(Revised) *Cocaine, Narcotic Drugs, and Methamphetamine*: Costs are estimated to increase \$385,500 to \$1,507,500 in FY 2015 and \$1,751,000 to \$6,847,400 in FY 2016. These estimates are based on the increases in full-year-equivalent stays in state correctional facilities due to proposed increases in the penalties. The sentences were modeled based on 2008 through 2012 commitment data for the Indiana Department of Correction offender population. A marginal cost of \$8.95 and \$35 per day has been used to determine the costs involved.

[The bill also would reduce the distance from school property and remove or add other locations to the factors resulting in an enhanced penalty. The estimated increase below does not reflect these proposals.]

Full-Year-Equivalent Stay Increases Based on Changes in Sentence Length

	2015	2016	2017	2018	2019	2020	2025	2030	2035
35-48-4-1 Dealing in cocaine or narcotic drug	63	280	509	672	770	830	937	944	947
35-48-4-1.1 Dealing in methamphetamine	55	256	478	639	736	796	902	910	912

The changes that were made to the criminal penalties and elements of the crimes are detailed below.

Drug Law Changes

	Current Law	Proposal
IC 35-48-4-1 Dealing in cocaine or narcotic drug	Level 5 Under 3 grams	Level 4 Under 3 grams
	Level 4 3-10 grams, or Under 3 grams and enhancing circumstance	Level 3 3 - 10 grams or Under 3 grams and enhancing circumstance
	Level 3 10-28 grams, or 3-10 grams and enhancing circumstance	Level 2 10 grams or more, or 3-10 grams and enhancing circumstance
	Level 2 28 grams or more, or 10-28 grams and enhancing circumstance	

	Current Law	Proposal
IC 35-48-4-1.1 Dealing in methamphetamine	Level 5 Under 3 grams	Level 4 Under 3 grams
	Level 4 3-10 grams, or Under 3 grams and enhancing circumstance	Level 3 3 - 10 grams or Under 3 grams and enhancing circumstance
	Level 3 10-28 grams, or 3-10 grams and enhancing circumstance	Level 2 10 grams or more, 3-10 grams and enhancing circumstance, or manufacturing resulting in explosion causing serious bodily injury
	Level 2 28 grams or more, or 10-28 grams and enhancing circumstance, or manufacturing resulting in explosion causing serious bodily injury	
IC 35-48-4-1 Dealing in cocaine or narcotic drug	Enhancing circumstance include: On a school bus;	Enhancing circumstance include: On a school bus;
IC 35-48-4-1.1 Dealing in methamphetamine	In, on, or within 500 feet of: (i) school property; or (ii) a public park.	In, on, or within 250 feet of: (i) school property; (ii) a public park; (iii) a family housing complex; or (iv) a child care facility.
IC 35-48-4-10.5 Synthetic drug or synthetic drug lookalike substance violation	While a person under 18 years of age was reasonably expected to be present	
IC 35-48-4-14.5 Possession of precursors		
IC 35-48-4-16 Offenses relating to controlled substances		

Modified Convictions and Sentences: If an offender serves a shorter period of incarceration, either because a sentence is modified or, when sentenced for a new crime, a prior conviction was a misdemeanor instead of a felony, state expenditures could be reduced. There are no data available to indicate how many more offenders may have their conviction or sentence modified under the provisions of the bill.

The bill would allow a court to reduce a Level 6 felony to a Class A misdemeanor at any time. Current law restricts the modification to three years from the date of conviction. The bill also allows the court to modify the sentence of a felony offender without the approval of the prosecutor. However, the court may not reduce or suspend the sentence below what the court was able to impose at the time of sentencing. (This would include plea bargain agreements.) The bill also limits when an offender may petition for sentence modification.

(Revised) *Nonsuspended Sentence*: If an offender is given a suspended sentence, the amount of time the offender is incarcerated may be reduced. The bill would restrict the amount of a sentence that may be suspended for a Level 3 felony offender with a prior conviction and would apply the restriction to all Level 1 felony offenders (not just those with prior convictions), resulting in an increase in the length of incarceration. However, under the bill, there are potential cost savings because the nonsuspendable sentence limitations would not apply to Level 2 and Level 3 felony controlled substance offenders.

A count of the number of offenders who had a fixed term of incarceration that was less than the minimum sentence of the felony level was performed using five years of new commitment data from CY 2008 to CY 2012. The average admissions per year and the additional years of sentence were used to estimate an increased cost of \$170,500 to \$666,900 annually for the additional full-time-equivalent stays for those offenders. [Note: Murder offenders were excluded from the cost estimate even though some of these offenders had sentences less than the minimum. The proposal does not change the law for these offenders, and the specific details of the sentences are not available in the admissions record.]

Felony Level	<u>Suspendable Portion of the Sentence</u>		<u>Offenders with Less than Minimum Sentence</u>		
	Current	Proposed	Average Annual Commitments	Average % of Minimum	Estimated Additional Sentence (Years)
Murder	In excess of the minimum	No Change	1	48%	--
1	With prior conviction; in excess of the minimum	Any conviction; in excess of the minimum	6	65%	7.0
2	With prior conviction; in excess of the minimum	With prior conviction other than a controlled substance offense; in excess of the minimum	7	88%	1.2
3	Full sentence suspendable	With prior conviction other than a controlled substance offense; in excess of the minimum	2	53%	0.9
Source: DOC Admissions Data 2008 - 2012.					

Habitual Offenders: The bill increases the minimum additional fixed sentence that the court may impose on a habitual offender. The following table shows the change in the minimum term. It also shows the five-year average annual new commitments who were designated as habitual offenders and who have a sentence shorter than the proposed additional fixed sentence.

Habitual Offender - Additional Fixed Sentence

	Murder or Level 1 to Level 4	Level 5 or Level 6
Increase in Minimum Additional Fixed Sentence	0 to 6	0 to 2
Average Annual Admissions of Habitual Offenders with a Fixed Term of Incarceration Less Than the Proposed Minimum Additional Fixed Sentence	23.2	60

(Revised) *Juvenile Court Jurisdiction*: The bill potentially changes the type of state correctional facility (adult or juvenile) where a person less than 18 years of age may serve a term of incarceration. Any savings is expected to be minimal because the number of offenders committed to an adult correctional facility between CY 2008 and CY 2012 is minimal.

Under current law, a juvenile who commits one of the listed crimes is under the jurisdiction of the adult court by function of law, and serves a term of incarceration in an adult correctional facility if sentenced to prison. Under the bill, the juvenile court would have to waive the juvenile to the adult court. As a result, more offenders may be sentenced to a juvenile facility.

The offenses removed from the list include criminal gang activity, criminal gang intimidation, or manufacturing or dealing in cocaine or a narcotic drug, dealing in methamphetamine, dealing in a Schedule I, II, or III controlled substance, or dealing in a Schedule IV controlled substance if the juvenile had a similar prior conviction or juvenile adjudication and is at least 16 years old at the time of the violation.

(Revised) *Credit Time: Credit Class* - There are insufficient data available to estimate the effect of applying credit time earnings based on the date that the crime was committed.

However, placing Level 6 felony offenders in Class A credit class would result in cost savings estimated at \$3,304,000 to \$12,920,600 in FY 2015 and \$4,978,700 to \$19,469,800 in FY 2016. The reduction results from increased credit time earnings at the rate of one day of credit time for each day of incarceration, or a factor of 50%. Current law would have earnings of one day of credit time for every three days of incarceration, or a factor of 75%. This change applies only to Level 6 felony offenders. The reduction in utilization levels off in about 2019 or 2020, reflecting the shorter length of sentence of Level 6 felony offenders.

Credit Class Application

	2015	2016	2017	2018	2019	2020	2025	2030	2035
Full-Year-Equivalent Stays	(1,011)	(1,524)	(1,657)	(1,706)	(1,723)	(1,730)	(1,731)	(1,729)	(1,727)

Educational Credit Time - Subtracting the educational credit time from the length of stay rather than the sentence potentially reduces costs after an initial increase. In FY 2015, costs would increase \$5,300 to \$20,800, and in FY 2016 the costs of incarceration would begin to decrease \$259,500 to \$1,014,900. These estimates are based on the changes in full-year-equivalent stays in state correctional facilities due to proposed application of earned credit. The sentences were modeled based on 2008 through 2012 commitment data for the Indiana Department of Correction offender population. The changes in utilization of prisons by the change to offender sentences proposed by the bill are discussed below. A marginal cost of \$8.95 and \$35 per

day has been used to determine the costs involved.

[The bill selects among different versions concerning education credit time and requires that the time earned is directly proportional to the time served and course work completed while incarcerated. This is reflected in the estimate.]

Educational Credit Time Application Changes

	2015	2016	2017	2018	2019	2020	2025	2030	2035
Full-Year-Equivalent Stays	2	(79)	(158)	(209)	(243)	(274)	(416)	(486)	(525)

Nomenclature: Examination of the new commitments between CY 2008 and CY 2012, there were no offenders with a conviction for the crimes specified in the table below. [This determination is based on the first six crimes on record and includes the most severe crime upon which the length of stay is based.] Consequently, it is likely there will be very little additional expenditures from changes in the penalty structure for these crimes. However, a Class C and a Class D felony have a wider sentencing range and a higher midpoint or advisory sentence than a Level 5 and Level 6 felony, respectively. All things being equal, this may result in a shorter length of stay if an offender were committed under one of the listed offenses.

In some cases, the elements of the crime are reconciled among the versions in current law. Since there are no offenders who have committed these offenses, the changes in the elements do not have significant fiscal impact.

Indiana Code/Brief Description	Felony Class (old)	Felony Level (new)
2-8.2-4-6 Duties of delegates to a constitutional convention	D	6
3-7-29-1 County voter registration - providing records to precinct inspectors	D	6
3-14-1-17 Campaign violations	D	6
3-14-2-3 False affidavit	D	6
3-14-2-11 Voting in the wrong place	D	6
3-14-2-29 Inspecting a voting system without an order of inspection	D	6
6-6-2.5-28 Using special gas on Indiana public highways	D	6
6-6-13-13 Knowingly failing to collect or timely remit aviation fuel excise tax	D	6
7.1-5-1-9.5 Violation concerning shipping alcoholic beverages	D	6
8-10-1-29 Purchasing violations concerning the Ports of Indiana (purchaser and seller violations)	D	6
9-17-3-7 Second violation concerning transfer of vehicle	D	6
9-17-4-14 Owning or possessing a motor vehicle in violation of regulations	D	6
9-17-4-15 Knowingly damaging, removing, or altering an original or a special identification number	C	5
9-17-4-16 Knowingly selling or offering for sale a motor vehicle with an original or a special identification number that is destroyed, removed, altered, covered, or defaced	D	6
9-17-4-17 Knowingly or intentionally selling or offering for sale a motor vehicle part with an identification number that is destroyed, removed, altered, covered, or defaced	D	6
9-17-4-18(c) Knowingly or intentionally possessing a plate or label that contains an identification number that is not attached to the motor vehicle or motor vehicle part to which the identification number was assigned	D	6
9-17-4-18(d) Knowingly or intentionally possessing a plate or label on which the identification number is altered or removed	D	6
9-17-4-18(e) With intent to defraud, possessing a plate or label containing a set of numbers, letters, or both that purports to be an identification number	D	6
9-22-3-33 Violating sections 4,5,6,7, or 8	D	6
9-22-5-18.2 Scrapping motor vehicles	D	6
9-32-17-2 A second or subsequent unrelated violation concerning certificate of title	D	None
16-41-12-15 Transfer contaminated blood	C	5
16-41-12-15 Transfer contaminated blood causing HIV infection	A	4

Indiana Code/Brief Description	Felony Class (old)	Felony Level (new)
23-19-5-8 Violation of Indiana Uniform Securities Act	C	5
23-29-5-8 Violation of Indiana Uniform Securities Act	B	4
25-22.5-8-2 Unlawful practice of medicine or osteopathic medicine	C	5
25-22.5-8-2 Acting as a physician assistant without a license (includes practicing midwifery without a license before January 1, 2014)	D	6
25-23.4-3-7 Knowingly or intentionally practicing midwifery without a certificate	D	6
35-42-4-13 Inappropriate communication with a child	D	6
35-43-5-4.6 Knowingly or intentionally selling, purchasing, installing, transferring, or possessing an automated sales suppression device or a zapper, or a phantom-ware	C	5
35-44.1-2-3 False reporting	D	6
35-44.1-3-5 Trafficking with an inmate	C	5
35-46-9-6(b) Operating a motor boat while intoxicated with a previous conviction	D	6
35-46-9-6(c) Operating a motor boat while intoxicated resulting in death	C	5
*35-48-4-10.5(a) Knowingly or intentionally dealing in a synthetic drug or synthetic drug lookalike substance with a prior unrelated judgment or conviction	D	6
*35-48-4-10.5(c)(1) Synthetic drug or synthetic drug lookalike substance violation where the recipient or intended recipient is less than 18 years of age, the amount involved is more than 2 grams, or the person has a prior conviction	D	6
*35-48-4-10.5(c)(2) Synthetic drug or synthetic drug lookalike substance violation, where the amount is more than 2 grams and the person delivered or financed the delivery of the synthetic drug or synthetic drug lookalike substance on a school bus or in, on, or within 500 feet of a school or a public park, while a person under 18 years of age was reasonably expected to be present	C	5
35-48-4-11.5 Possessing a synthetic drug or synthetic drug lookalike substance with a prior conviction	D	6
*These crimes were recently enacted and there would be no criminal history for prison admissions.		

The nomenclature will change for five crimes that have had some commitments to prison in the past five years. Any fiscal impact from the conversion of the sentence is expected to be minimal. The table below shows the total number of offenders committed for one of these crimes and the number for which the offense was the most severe crime for which the offender was sentenced. [The most severe crime is usually on which the sentence length is based.]

Indiana Code/Brief Description	Total Offenders Convicted	Most Severe Offense	Felony Class (old)	Felony Level (new)
35-42-4-12 Sex offender Internet offense	1	0	D	6
35-47-9-2 Possession of a firearm on school	6	4	D	6
11-8-8-15 Failure of a sex or violent offender to possess identification (enhanced penalty)	5	3	D	6
35-46-3-11 Injuring an officer	7	0	D	6
35-42-4-11 Sex offender residency offense	18	14	D	6

Other changes in the bill are expected to have no fiscal impact as the same set of offenders are identified in the new nomenclature, and similar language is used. The sections affected are briefly described below.

Indiana Code	Brief Description
9-32-17-2	Repeals specific code section penalties, making violation of the chapter a Class C infraction or Class B misdemeanor in certain circumstance.
12-7-2-53.2	Defines dangerous offenses for daycare regulations
31-30-4-5	Juvenile law, sentencing alternative for certain offenders under criminal court jurisdiction
31-37-13-5	Juvenile law, factfinding hearing
35-38-9-2	Expungement, misdemeanor, or Class D/Level 6 offender reduced to a misdemeanor
35-38-9-3	Expungement, Class D/Level 6 offender not reduced to a misdemeanor
35-41-4-2	Standards of proof and bars to prosecution
35-41-5-1	Assigns attempted murder to Level 1
34-42-3.5-1	Offenses related to human and sexual trafficking
35-42-4-1	Rape
35-42-4-3	Child molesting
35-42-4-4	Child exploitation
35-42-4-6	Child solicitation
35-42-4-7	Child seduction
35-43-2-2	Criminal trespass
35-44.1-3-1	Resisting law enforcement
35-45-2-1	Intimidation
35-46-1-4	Neglect of a dependant
35-47-4-5	Possession of a firearm by a serious felon
35-48-4-14.5	Possession of precursors
35-50-2-0.1	Sentences for habitual offenders
35-50-2-2.1	Juvenile sentencing for offenses that would be a felony if committed by an adult

Merging Versions: The bill merges versions of the code that were enacted or amended without acknowledging the other version. In some cases there is no conflict between the versions, and the bill merges and unifies the language. In other cases, there are differences, and the bill selects among the versions or makes additional changes to the version. A brief description of the changes made are provided in the table below. Any fiscal impact of the changes is indeterminate.

Indiana Code	Change
8-10-1-29	Concerning Ports of Indiana procurement; increases the contract limit from \$25,000 to \$150,000
16-41-12-15	Repeals a requirement that a blood center shall request a Social Security number from a donor
24-4-18-6	Repeals a requirement that a criminal history provider may only provide history related to a conviction. Removes an infraction, arrest, or charge that did not result in a conviction from the information a criminal history provider may not provide.
33-37-5-23	Increases the assessment of sexual assault victims assistance fee from between \$250 and \$1,000 to between \$500 and \$5,000
35-42-3.5-1	Increases the maximum age of a victim of human trafficking of a minor from 16 to 18 years
35-42-4-4	Increases the maximum age of a victim of possession of child pornography from 16 to 18 years
35-42-4-13	Reduces the minimum age of the offender from 21 to 18 years of age for inappropriate communication with a child
35-47-9-2	Regarding possessing a firearm, repeals in or on property being used by a school for a school function
35-48-4-10	Repeals language that a recipient be under 18 years of age
35-48-4-14.5	Reduces the distance from a school property or park and eliminates a family housing complex or a youth program center from the crimes of possessing precursors
35-42-4-12	Removes general provisions concerning prohibited offenders and applies more specific conditions
35-50-2-9	Makes a change in aggravating circumstances concerning the death penalty

In addition to the list above, enhancing circumstances now specify that a prior conviction in any jurisdiction is included for dealing in a controlled substance and that the offense may include any attempt or conspiracy to commit the offense. It is expected that these changes will increase sentence length.

(Revised) As an explanation of the terms used above, utilization by offenders is presented as a full-year equivalent. Consequently, an offender incarcerated for 12 months would have a full-year-equivalent utilization of 1 year, an offender incarcerated for 9 months would have a full-year-equivalent utilization of 0.75 year, and an offender incarcerated for 3 months would have a full-year-equivalent utilization of 0.25. Together, an offender incarcerated for 9 months and an offender incarcerated for 3 months would represent a full-year-equivalent utilization of 1.0.

The data used was the most recent five years of new commitment admissions to state correctional facilities. The most severe crime committed by each offender was the basis for estimating the length of stay.

The average expenditure to house an adult offender was \$19,386 in FY 2013. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,266 annually, or \$8.95 daily, per prisoner. The

estimated average cost of housing a juvenile in a state juvenile facility was \$77,489 in FY 2013. Offenders are housed in county jails when there is more population than available space at a state facility for \$35 a day. Cost estimates used both the \$8.95 daily cost and the \$35 a day jail cost.

Explanation of State Revenues: *Pretrial Diversion:* If additional deferrals occur and the case is filed in a circuit, superior, or county court, 70% of the \$120 deferred prosecution fee that is assessed and collected when a county attorney has established a pretrial diversion program is deposited in the state General Fund. The automated record keeping fee of \$7 assessed in pretrial diversion or deferral program cases is distributed to State Homeowner Protection Unit Account.

Explanation of Local Expenditures: (Revised) *Summary:* The bill may cause offenders who would otherwise have been incarcerated in a state facility to serve a term of incarceration at the local level. Diversions may be assigned to local community corrections programs, where available. In some cases, the time served in a local jail awaiting trial or sentencing may reduce the time incarcerated in state facility. In these cases, there is no extra expense for the local facility for incarceration. There may also be some cost savings through credit time changes in the bill.

If more defendants are detained in county jails, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

(Revised) *Credit Time:* Under the bill, all misdemeanor offenders are able to earn one day of credit time for each day served. This would reduce the utilization of jail by an indeterminate amount over current law, which provides for one day for every three days served.

Explanation of Local Revenues: *Pretrial Diversion:* If additional pretrial diversions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$120 deferred prosecution fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the deferred prosecution fee. The pretrial diversion program fee is assessed as part of pretrial division programs established by prosecutors. The \$50 initial fee and the \$10 per month fee are deposited in the county or local user fee fund. In the case of a county, the fee may be transferred to a county pretrial diversion program fund if one has been established.

(Revised) *Home Detention:* The bill clarifies that the credit earned by a probationer on home detention is one day for each day served. There are no data available to indicate how this credit is currently applied throughout the home detention programs. Offenders on home detention pay a fee set by the court in addition to the probation user's fee.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: *Indiana Trial Court Fee Manual*, Indiana Sheriffs' Association, Department of Correction

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